Mat Saat bin Ahmad & Ors v Linfox Transport Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–208–07 OF 2015
AZIZAH NAWAWI J
2 JANUARY 2019

Administrative Law — Judicial review — Certiorari — Application to quash award of Industrial Court on jurisdictional issue — Industrial Court's finding on date of dismissal different from Minister's reference — Whether Industrial Court made error in law when it decided that date of dismissal different from that in Minister's reference — Whether Industrial Court had jurisdiction — Whether claimants' dismissal unreasonable — Industrial Relations Act 1967 s 43

The applicants were seeking to quash the award of the Industrial Court No 422 of 2015. The applicants were the former employees ('the claimants') of the first respondent ('the company') and were employed as drivers to transport gas from Malaysian Oxygen to various places in Semenanjung Malaysia. A dispute arose between the claimants and the company. On 4 January 2007, about 40–50 employees (including the claimants) gathered at Shapadu Rest Area refusing to resume work. Despite several approaches by the company, the employees refused to report back to work, resulting in a deadlock. When the employees continued to refuse to report for duty, the company started to issue termination letters dated 8 January 2007. Thereafter, 47 employees had appealed to the company, and their appeals were accepted by the company. The claimants then filed a representation under s 20 of the Industrial Relations Act 1967 ('the Act') to the Industrial Relations Department and the representation was referred to the Industrial Court for an adjudication by the Minister under s 20(3) of the Act. After a full trial, the Industrial Court had dismissed the claimants' claim. Hence, this application to quash the said award.

Held, dismissing the application and affirming the award of the Industrial Court:

(1) The Minister's reference to the Industrial Court was on the issue of dismissal ie whether the claimants were dismissed by the company with just cause and excuse. It was for the Industrial Court to ascertain the date of the dismissal after hearing all the evidence. But once the Industrial Court found that the claimants had been dismissed on a different date, other than the date in the Minister's reference, it did not mean that the Industrial Court no longer had the jurisdiction, because the Industrial Court was already seized with the jurisdiction from the Minister's

reference itself. The reference was on the claimant complaints, that was on their dismissal. It was clearly irrational if the Industrial Court suddenly found itself lacking in jurisdiction after combing through the evidence and made a finding that the date of dismissal was different from the date in the ministerial reference. Therefore, the Industrial Court had not made an error in law when it decided that the date of dismissal was different from that in the Minister's reference (see paras 25, 27 & 29).

(2) Since the claimants did not give any evidence on the notice as required under s 43 of the Act therefore it could not be said that their dismissal was unreasonable, as they were involved in an illegal strike (see para 30).

[Bahasa Malaysia summary

Pemohon telah memohon untuk membatalkan award Mahkamah Perusahaan No 422 Tahun 2015. Pemohon adalah bekas pekerja ('pihak yang menuntut') responden pertama ('syarikat') dan telah bekerja sebagai pemandu untuk mengangkut gas dari Malaysian Oxygen ke pelbagai tempat di Semenanjung Malaysia. Pertikaian timbul antara pihak yang menuntut dan syarikat. Pada 4 Januari 2007, kira-kira 40–50 pekerja (termasuk pihak yang menuntut) berkumpul di Shapadu Rest Area enggan meneruskan kerja. Walaupun beberapa pendekatan dibuat oleh syarikat, pekerja enggan melaporkan kembali bekerja, mengakibatkan kebuntuan. Apabila pekerja terus menolak untuk melaporkan tugas, syarikat mula mengeluarkan surat penamatan bertarikh 8 Januari 2007. Selepas itu, 47 pekerja telah merayu kepada syarikat, dan rayuan mereka diterima oleh syarikat. Pihak yang menuntut kemudian memfailkan perwakilan di bawah s 20 Akta Perhubungan Perusahaan 1967 ('Akta') kepada Jabatan Perhubungan Perusahaan dan perwakilan tersebut dirujukkan kepada Mahkamah Perusahaan bagi adjudikasi oleh Menteri di bawah s 20(3) Akta. Selepas perbicaraan penuh, Mahkamah Perusahaan telah menolak tuntutan pihak yang menuntut. Oleh itu, permohonan ini untuk membatalkan award tersebut.

Diputuskan, menolak permohonan dan mengekalkan award Mahkamah Perusahaan:

(1) Rujukan Menteri kepada Mahkamah Perusahaan adalah mengenai pemecatan iaitu sama ada pihak yang menuntut telah dipecat oleh syarikat dengan sebab dan alasan yang adil. Ia adalah untuk Mahkamah Perusahaan untuk memastikan tarikh pemecatan itu setelah mendengar semua keterangan. Tetapi sebaik sahaja Mahkamah Perusahaan mendapati bahawa pihak yang menuntut telah dipecat pada tarikh yang berlainan, selain daripada tarikh rujukan Menteri, ini tidak bermakna bahawa Mahkamah Perusahaan tidak lagi mempunyai bidang kuasa, kerana Mahkamah Perusahaan telah ditangkap dengan bidang kuasa daripada rujukan Menteri itu sendiri. Rujukan itu adalah mengenai aduan pihak yang menuntut, yang telah dipecat. Ia jelas tidak masuk akal

jika Mahkamah Perindustrian tiba-tiba mendapati dirinya kurang bidang kuasa selepas mengumpulkan keterangan dan membuat keputusan bahawa tarikh pemberhentian itu berbeza dari tarikh dalam rujukan menteri. Oleh itu, Mahkamah Perindustrian tidak membuat kesilapan dalam undang-undang apabila ia memutuskan bahawa tarikh pemberhentian itu adalah berbeza daripada rujukan Menteri (lihat perenggan 25, 27 & 29).

(2) Oleh kerana pihak yang menuntut tidak memberikan apa-apa keterangan mengenai notis seperti yang dikehendaki di bawah s 43 Akta maka tidak dapat dikatakan bahawa pemecatan mereka tidak masuk akal, kerana mereka terlibat dalam mogok haram (lihat perenggan 30).]

Cases referred to

Booi Kim Lee v Menteri Sumber Manusia & Anor [1999] 3 MLJ 515, HC (refd)
Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, HL (refd)
Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111, SC (distd)
Hong Leong Equipment Sdn Bhd v Liew Fook Chuan & another appeal [1996] 1 MLJ 481; [1997] 1 CLJ 665, CA (refd)
Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
Shafie bin Abd Rahman v Petroliam Nasional Bhd & Anor [2010] MLJU 1290, HC (consd)
Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd & another appeal [1995] 2 MLJ 753; [1995] 3 CLJ 344, FC (refd)

Legislation referred to

Industrial Relations Act 1967 ss 20, 20(3), 33A, 43

Ramdhari JBS (P Kuppusamy & Co) for the applicant.
Rejinder Singh (Rejinder Singh & Assoc) for the first respondent.

Azizah Nawawi J:

APPLICATION

[1] The applicants are seeking to quash the award of the Industrial Court No 422 of 2015 dated 13 April 2015.

[2] Having considered the application and the submission of the parties, this court had dismissed the application and affirmed the award of the Industrial Court.

THE SALIENT FACTS

[3] The applicants were the former employees (the 'claimants') of the first respondent (the 'company') and were employed as drivers to transport gas from Malaysian Oxygen to various places in Semenanjung Malaysia.

[4] The claimants were paid allowances per trip in accordance with the distance they travel outstation based on the 'Manual System'.

[5] In November 2006, the Manual System was changed to a computerised system called 'LINDIZ'. As a result of this change, a dispute arose between the claimants and the company.

[6] On 4 January 2007, about 40–50 employees (including the claimants) gathered at Shapadu Rest Area refusing to resume work.

[7] Despite several approaches by the company, the employees refused to report back to work, resulting in a deadlock.

[8] When the employees continued to refuse to report for duty, the company started to issue termination letters dated 8 January 2007. The termination letter, inter alia, states as follows:

> You have categorically refused to perform work effective from 4.10.2007 despite repeated request and appeals by ... for you to commence work, however you and others still refused to commence work thus causing an enormous failure due to your action. Your concerted act of illegal gathering is also deemed as an act of illegal strike.
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> This act of defiance by you and others is viewed very seriously by management and under the said circumstances, we have no alternative but to dismiss you with immediate effect.

[9] Thereafter, 47 employees had appealed to the company, and their appeals were accepted by the company.

[10] The claimants then filed a representation under s 20 of the Industrial Relations Act 1967 to the Industrial Relations Department and the representation was referred to the Industrial Court for an adjudication by the Minister under s 20(3) of the Industrial Relations Act 1967.

[11] After a full trial, the Industrial Court had dismissed the claimants' claim. Hence, the claimants filed this application to quash the said award.

A THE FINDINGS OF THE COURT

[12] The Federal Court in *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629 has set out the function of the court in an application for Judicial Review and the correct test to be applied in reviewing findings of fact made by the Industrial Court, to be as follows:

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> [15] ... Historically, judicial review was only concerned with the decision making process where the impugned decision is flawed on the ground of procedural impropriety. However, over the years, our courts have made inroad into this field of administrative law. *Rama Chandran* is the mother of all those cases. *The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.*
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> [16] The *Rama Chandran* decision has been regarded or interpreted as giving the reviewing court a license to review without restrain decisions for substance even when the said decision is based on finding of facts. However, post *Rama Chandran* cases have applied some brakes to the courts' liberal approach in *Rama Chandran*. The Federal Court in the case of *Kumpulan Peransang Selangor Bhd v Zaid bin Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 after affirming the *Rama Chandran* decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in *Rama Chandran* may be wholly inappropriate.
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> [17] The Federal Court, in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the *Rama Chandran* approach. Further, *it was held that a reviewing judge ought not to disturb findings of the Industrial Court unless they were grounded on illegality or plain irrationality, even where the reviewing judge might not have come to the same conclusion.*
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> [18] The Court of Appeal has in a number of cases held that where finding of facts by the Industrial Court are based on the credibility of witnesses, those findings should not be reviewed (see *William Jacks & Co (M) Sdn Bhd v S Balasingam* [2000] 7 MLJ 1; [1997] 3 CLJ 235 *National Union of Plantation Workers v Kumpulan Jerai Sdn Bhd (Rengam)* [2000] 2 MLJ 144; [2001] 1 CLJ 681, *Quah Swee Khoon v Sime Darby Bhd* [2000] 2 MLJ 600; [2001] 1 CLJ 9, *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong & another appeal* [2001] 4 MLJ 97; [2001] 3 CLJ 9. However, there are exceptions to this restrictive principle where:
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> (a) reliance upon an erroneous factual conclusion may itself offend against the principle of legality and rationality; or
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> (b) there is no evidence to support the conclusion reached.
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> (See *Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba* [1998] 2 MLJ 372; [1998] 3 CLJ 288).
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> [19] It is clear from the above authorities that the scope and ambit of *Rama*

C D E F G H I

Chandran had been clearly explained and clarified. Decided cases cited above have also clearly established that *where the facts do not support the conclusion arrived at by the Industrial Court, or where the findings of the Industrial Court had been arrived at by taking into consideration irrelevant matters, and had failed to consider relevant matters into consideration, such findings are always amendable to judicial review.* (Emphasis added.)

[13] In *Booi Kim Lee v Menteri Sumber Manusia & Anor* [1999] 3 MLJ 515, Justice KC Vohrah adopted Lord Diplock's classification of grounds of judicial review in the House of Lords case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374. The three grounds described by Lord Diplock are:

(a) illegality;

(b) irrationality; and

(c) procedural impropriety.

[14] By illegality as a ground for judicial review, it means 'that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it' and that '... the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess'.

[15] By irrationality it means '*Wednesbury* unreasonableness' and 'applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided upon could have arrived at it'.

[16] By procedural impropriety, it includes 'failure by an administrative tribunal to observe procedural rules that are expressly laid out ...' and 'duty to act fairly'.

[17] In the present case, the only issue raised by the claimants is that they have been dismissed by the company on 4 January 2007 but the Industrial Court made a finding of fact that they were not dismissed on 4 January 2007. Therefore, the applicants submit that the Industrial Court has committed a serious error of law and/or fact and had acted outside its statutory jurisdiction when it stated that the dismissal date is 8 January 2007 and not 4 January 2007, as stated by the Minister in the reference for adjudication before the Industrial Court.

[18] The applicants have submitted that since the Industrial Court's finding on the date of dismissal is different from the Minister's reference, then premised on the case *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988]

1 MLJ 111, the Industrial Court has no jurisdiction to adjudicate on the complaint which is not the subject matter of the Minister's reference under s 20(3) of the IRA 1967. The relevant part of *Dreamland Corp* case that was relied by the company and the Industrial Court reads as follows:

> Accordingly, we hold that the workman was lawfully dismissed as was held by the Industrial Court. However, neither that Court nor the High Court were correct in amending the date of dismissal and in awarding compensation as a consequence of such amended date, both matters outside their jurisdiction in an enquiry under s 20(3) of the Industrial Relations Act.

[19] However the issue in *Dreamland Corp* case is different from the present case. In *Dreamland Corp*, the Industrial Court has heard the witnesses and handed down the following award:

> 1. I find that there is evidence that the Claimant had talked about the low salaries and low increment to the staff in the Company, and this to my mind brings about a bad effect among the staff concerned, so I uphold the dismissal of the Claimant by the Company.
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> 2. The Claimant had committed a misconduct and before such dismissal took effect the Company did not hold any inquiry at all. Though I uphold the order of dismissal of the Claimant *the effective date of such dismissal takes effect on the last date of the hearing;* therefore, the Claimant is entitled to back wages from the date of dismissal 23 February 1984 till 28 April 1986, ie, 26 months and 4 days at the rate of RM2,400 a month ... RM62,720.
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> 3. The Company is to pay this sum within one (1) month from the date of this Award after tax clearance. (Emphasis added.)

[20] This above award was referred under s 33A of the Industrial Relations Act 1967 to the High Court on the following questions of law:

(a) does the Industrial Court have jurisdiction to award compensation to a workman whose dismissal has been upheld by the court; and

(b) does the Industrial Court have jurisdiction to amend the date of dismissal of the workman so that the workman is deemed to be in employment until the date of the award and thereby become entitled to back wages?

[21] It is in relation to the second question of law that the Supreme Court held that the Industrial Court (and the High Court which affirmed the decision of the Industrial Court) has no jurisdiction to amend the date of dismissal (of the employee by the employer on 23 February 1984) to the last date of the hearing in the Industrial Court, ie 28 April 1986. The actual date of dismissal cannot be amended to any other date in order to grant the employee back wages.

[22] Therefore, in the *Dreamland Corp* case, as to what is the date referred to in the Minister's reference is not even in the case itself. There is no issue that the date of dismissal in the Minister's reference is different from the actual date of dismissal found by the Industrial Court in *Dreamland Corp* case.

[23] The issue on the date is in the second question of law referred to the High Court, that is whether the Industrial Court can change the actual date of dismissal to another date, and in that case, to the last date of hearing before the Industrial Court. The Supreme Court held that both the Industrial Court and the High Court have no jurisdiction to change the date of dismissal, and thereafter deemed that the employee is still in the employment during the extended period.

[24] I am of the considered opinion that the relevant case to consider is the decision of Justice Aziah Ali in *Shafie bin Abd Rahman v Petroliam Nasional Bhd & Anor* [2010] MLJU 1290. In this case, Justice Aziah Ali held as follows:

> [8] It is the Ministerial reference and not the statement of case that determines the Industrial Court's jurisdiction. In the present case, what is the dispute referred by the Minister to the Industrial Court? *The subject matter of reference as reflected in the Award is the dismissal of the Applicant by the firstespondent. That is the dispute referred to the Industrial Court for adjudication and it is clearly within the scope of the Industrial Court's jurisdiction*. The date of dismissal is a matter for determination by the Industrial Court.
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> [9] The applicant herein claims constructive dismissal. Hence the issues before the Industrial Court are amongst others:
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> (a) whether there was constructive dismissal; and
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> (b) if there was constructive dismissal, whether the date of dismissal is 29 September 2005 as stated in the Ministerial reference or 30 September 2005 as stated in the statement of case.

[25] I am therefore of the considered opinion that the Minister's reference to the Industrial Court is on the issue of dismissal, whether the claimants were dismissed by the company with just cause and excuse. That is the substance of the Minister's reference.

[26] On the issue of the date of the dismissal, the same does not go to the issue jurisdiction as it is a finding of fact by the Industrial Court as to whether the dismissal took place on 4 January 2007 or 8 January 2007. The claimants have asserted their position that they have been dismissed on 4 January 2007. They then made their complaint to the Minister, and the Minister referred their complaints to the Industrial Court for adjudication. It is not for the Minister to ascertain the 'correct' or 'actual' date of dismissal in order to state the 'correct date' in his ministerial reference. In *Hong Leong Equipment Sdn Bhd*

v Liew Fook Chuan & another appeal [1996] 1 MLJ 481; [1997] 1 CLJ 665, the Court of Appeal held as follows:

> To summarise, when a question arises as to whether the Minister has correctly exercised his discretion under s 20(3) of the Act , it is the solemn duty of a Court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representations made under s 20(1) are neither perverse, frivolous nor vexatious, a decision not to refer is liable to be quashed by an order of certiorari.
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> ...
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> It follows from these decisions that the Minister must bear in the forefront of his mind that the Act has established a special tribunal to adjudicate upon a dispute arising from representations made under s 20(1) of the Act and that it is therefore no part of his function to arrive at a concluded view upon the merits of the dispute. *His role is limited to ascertaining whether, on the facts and materials placed before him, the representations raised serious questions of fact or of law calling for adjudication.* And, as I have already said, his determination upon the question one way or the other is not conclusive. (Emphasis added.)

[27] Thereafter, it is for the Industrial Court to ascertain the date of the dismissal after hearing all the evidence. But once the Industrial Court finds that the claimants have been dismissed on a different date, other than the date in the Minister's reference, it does not mean that the Industrial Court no longer has the jurisdiction, because the Industrial Court is already seized with the jurisdiction from the Minister's reference itself. The reference is on the claimant complaints, that is on their dismissal. It is clearly irrational if the Industrial Court suddenly finds itself lacking in jurisdiction after combing through the evidence and makes a finding that the date of dismissal is different from the date in the ministerial reference.

[28] In *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd & another appeal* [1995] 2 MLJ 753; [1995] 3 CLJ 344, the Federal Court held as follows:

> [2] *Once a case of wrongful dismissal has been properly referred by the Minister under s 20(3), the Industrial Court is seized with jurisdiction and is obliged under the Act to determine the dispute on merits, unless the reference itself is void an initio*. The Industrial Court has no jurisdiction to change the scope of such reference ... (Emphasis added.)

[29] Therefore, I am of the considered opinion that the Industrial Court has not made an error in law when it decided that the date of dismissal is different from that in the Minister's reference.

[30] Added to that, it is not in dispute that the claimants were involved in a strike, when they refused to report for work despite attempts made by the

company to get them back to work. Section 43 of the Industrial Relations Act 1967 provides the restrictions on strike, which, inter alia, requires notice to be given to the company/employer. In this case, the claimants did not give any evidence on the notice as required under s 43. Therefore, it cannot be said that their dismissal was unreasonable, as they were involved in an illegal strike.

[31] In the premise, I find that there is no merit in the application and the same is dismissed with cost.

Application dismissed and award of Industrial Court affirmed.

Reported by Nabilah Syahida Abdullah Salleh